IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IMPLICIT, LLC,	§	
Plaintiff,	§	CIVIL ACTION NO. 6:17-cv-183
	§	
v.	§	
	§	
TREND MICRO, INC.,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	
	§	
	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Implicit, LLC ("Plaintiff" or "Implicit"), by and through its attorneys, for its Original Complaint against Trend Micro, Inc. ("Defendant" or "Trend Micro"), and demanding trial by jury, hereby alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendant's unauthorized use, sale, and offer to sell in the United States of products, methods, processes, services and/or systems that infringe Implicit's United States patent, as described herein.

II. PARTIES

2. Plaintiff Implicit is a limited liability corporation organized and existing under the laws of the state of Texas, with its principal place of business at 600 Congress Avenue, 14th Floor, STE 14149, Austin, Texas 78701.

3. On information and belief, Defendant Trend Micro, Inc. is a corporation organized under the laws of California, having a principal place of business at 225 E. John

Carpenter Freeway, Suite 1500, Irving, Texas 75062. Trend Micro's registered agent for service of process in Texas is Ruth Ann Roman, 225 E. John Carpenter Freeway, Suite 1500, Irving, Texas 75062.

III. JURISDICTION AND VENUE

4. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 283, 284 and 285.

5. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

6. On information and belief, venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because Defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

7. On information and belief, Defendant Trend Micro is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

IV. FACTUAL ALLEGATIONS

8. Implicit Networks, Inc. ("Implicit Networks") provides software platforms and products that enable OEMs and ISVs to build applications for networks. Its products include Strings OS, which enables OEMs and ISVs to build, deploy, and manage applications in the network and on the devices that access the network; and RADkit, a toolkit designed specifically to build applications for network infrastructure and for devices that access the network. The company was founded in 1996 and is based in Austin, Texas.

9. U.S. Patent No. 9,591,104 (the "'104 patent"), entitled "Method and System for Data Demultiplexing," issued on March 7, 2017.

10. The foregoing patent is referred to herein as the "Patent-in-Suit." Implicit is the current assignee of the Patent-in-Suit, and has all rights to sue for infringement and collect past and future damages for the infringement thereof.

11. Defendant Trend Micro provides software and services directed to analysis and detection of packet content including attacks arising in a data network environment. For example, Trend Micro makes, uses, sells and deploys Deep Security, which performs deep packet inspection of traffic in a data network.

12. Deep Packet Inspection technology as implemented by Trend Micro enables the Deep Security product to analyze and respond to the contents of packets at multiple communication protocol layers.

13. Defendant Trend Micro offers products such as Trend Micro Deep Security 8.0 ("Deep Security") that infringe United States Patent No. 9,591,104. Deep Security consists of the following set of components that work together to provide protection: Deep Security Manager, Deep Security Virtual Appliance, Deep Security Agent, Deep Security Relay and Deep Security Notifier along with Smart Protection Servers.

14. On information of belief, Defendant Trend Micro also implements contractual protections in the form of license agreements with its customers to preclude the unauthorized reproduction, distribution and modification of its software. Moreover, on information and belief, Defendant Trend Micro implements technical precautions to attempt to thwart customers who would circumvent the intended operation of Trend Micro's products.

V. COUNT ONE

INFRINGEMENT OF U.S. PATENT NO. 9,591,104

15. Implicit incorporates by reference its allegations in Paragraphs 1-14 as if fully restated in this paragraph.

16. Implicit is the assignee and owner of all right, title and interest to the ’104 Patent. Implicit has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

17. On information and belief, Defendant Trend Micro, without authorization or license from Implicit, has been and is presently directly infringing the ’104 Patent, as infringement is defined by 35 U.S.C. § 271(a), including through making, using, selling and offering for sale methods and articles infringing one or more claims of the ’104 Patent. Defendant Trend Micro is thus liable for direct infringement of the ’104 Patent pursuant to 35 U.S.C. § 271(a).

18. On information and belief, at least since the filing of this Complaint, Defendant Trend Micro, without authorization or license from Implicit, has been and is presently indirectly infringing the ’104 Patent, including actively inducing infringement of the ’104 Patent under 35 U.S.C. § 271(b). Such inducements include without limitation, with specific intent to encourage the infringement, knowingly inducing consumers to use infringing articles and methods that Trend Micro knows or should know infringe one or more claims of the ’104 Patent. Trend Micro instructs its customers to make and use the patented inventions of the ’104 patent by operating Trend Micro’s products in accordance with Trend Micro’s specifications. Trend Micro specifically intends its customers to infringe by using the deep packet inspection technology of the Deep Security in accordance with those instructions and specifications in an infringing manner.

19. Trend Micro is accused of infringing the ’104 Patent by satisfying every element and limitation of at least one or more of claim 1 and claims dependent therefrom.

20. As a result of Trend Micro’s infringement of the ’104 Patent, Implicit has suffered monetary damages, and is entitled to an award of damages adequate to compensate it for such infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

VI. JURY DEMAND

21. Plaintiff Implicit demands a trial by jury of all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

VII. PRAYER FOR RELIEF

WHEREFORE, Implicit prays for judgment and seeks relief against Defendant as follows:

A. That the Court determine that one or more claims of the Patent-in-Suit is infringed by Defendant Trend Micro, either literally or under the doctrine of equivalents;

B. That the Court award damages adequate to compensate Implicit for the patent infringement that has occurred, together with prejudgment and post-judgment interest and costs, and an ongoing royalty for continued infringement;

C. That the Court permanently enjoin Defendant pursuant to 35 U.S.C. § 283; and

D. That the Court award such other relief to Implicit as the Court deems just and proper.

Dated: March 24, 2017

Respectfully submitted,

By: /s/ William E. Davis, III

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